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October 20, 2021

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

**Re: Applications of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC
for Approval of Smart \$aver Solar as Energy Efficiency Program
Docket Numbers: 2021-143-E & 2021-144-E**

Response in Opposition to ORS's Motion to Strike Certain Testimony

Dear Ms. Boyd:

On October 13, 2021, the South Carolina Office of Regulatory Staff ("ORS") filed its Motion to Strike Certain Testimony with the Public Service Commission of South Carolina. Enclosed for filing on behalf of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC please find the Response in Opposition to ORS's Motion to Strike Certain Testimony.

By copy of this letter, the same is being served on the parties of record.

Kind regards,

Sam Wellborn

Enclosure

cc: Parties of record

**BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NOS. 2021-143-E & 2021-144-E

In the Matters of:)	
)	
Application of Duke Energy Progress, LLC)	DUKE ENERGY PROGRESS, LLC'S
for Approval of Smart Saver Solar as)	AND DUKE ENERGY CAROLINAS,
Energy Efficiency Program)	LLC'S RESPONSE IN OPPOSITION
)	TO SOUTH CAROLINA OFFICE OF
Application of Duke Energy Carolinas,)	REGULATORY STAFF'S MOTION
LLC for Approval of Smart Saver Solar as)	TO STRIKE CERTAIN TESTIMONY
Energy Efficiency Program)	
_____)	

Pursuant to S.C. Code Ann. Regs. 103-829 and applicable South Carolina law, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (together the “Companies”) hereby respond in opposition to the South Carolina Office of Regulatory Staff’s (“ORS”) Motion to Strike Certain Testimony (the “Motion”) filed on October 13, 2021. As explained below, the ORS seeks to strike certain portions of the Companies’ testimony that were required to rebut the matters placed in dispute by the ORS in its very own direct testimony. South Carolina precedent makes clear that the testimony which the ORS seeks to strike is admissible under applicable South Carolina Rules of Evidence (“SCRE”), including SCRE 704. As such, the Commission should deny the Motion in its entirety.

RESPONSE

The Motion must be denied because the testimony at issue is (i) based upon personal knowledge, (ii) relevant, (iii) responsive, and (iv) admissible under South Carolina law.

- A. The statements are provided directly in response to ORS testimony and are necessary to understand the context for the witnesses’ decision-making and understanding of their duties.

The rebuttal testimony submitted by the Companies' Witnesses Ford and Huber fully comports with SCRE 704, which makes clear that "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." While ORS argues that the applicability of S.C. Code Ann. § 58-40-20(I) is solely "within the province of the Commission," such a position is directly contradicted by SCRE 704. Motion at 3. While these matters may be associated with issues to be decided by the Commission, the context of the statutes and Commission orders that do or do not apply to the Companies' operations must be understood and applied by the Companies' employees and consultants in order to effectuate their duties and explain and justify their decision-making.

Further, the Companies' testimony is directly responsive to matters placed into issue by ORS witnesses, including Witness Morgan's testimony regarding lost revenues and Witnesses Horii's and Morgan's assertions regarding Docket Nos. 2020-264-E and 2020-265-E (the "Solar Choice Dockets"). Companies' Witness Ford responded directly to Witness Morgan by raising "important distinctions between lost revenues associated with the Companies' distributed energy resource ('DER') programs and net lost revenues ('NLR')" as described in the Companies' EE/DSM Mechanisms approved in Commission Order Nos. 2021-32 and 2021-33. Ford Rebuttal Testimony at p. 3, ll. 17-18. Likewise, Witness Huber responded directly to Witnesses Morgan and Horii by explaining provisions within South Carolina law and this Commission's precedent which make "clear that solar may function as an EE measure." Huber Rebuttal Testimony at p. 7, ll. 4-5. Witness Huber also explained the clear distinctions between Docket No. 2019-182-E (the Commission's generic NEM docket), the Solar Choice Dockets, and these proceedings to respond to ORS's attempts to conflate the same, which could have—if not responded to—created confusion. Huber Rebuttal Testimony at p. 4, l. 15-p. 6, l. 3.

During these proceedings, parties from both sides inevitably must testify to some degree about applicable laws and regulations with which they seek to comply, and such testimony does not rise to “legal opinion.” Here, the testimony of Witness Ford and Witness Huber that the ORS asserts is “unqualified legal opinion” is provided in the context of direct quotes from a statute and/or prior Commission orders applicable to the Companies, and related to attempts by the Companies’ witnesses to comply with applicable law and Commission orders.¹ The Commission is well-equipped to consider this testimony, has the ability to question witnesses on such testimony, and can ultimately decide in its expert opinion what weight it should attribute to such testimony.²

By providing testimony regarding the ORS’s alleged interpretation of South Carolina law—specifically that Solar Choice requirements apply to a broad range of EE/DSM programs—the ORS must have necessarily expected that the Companies would provide their own interpretation of those same requirements. However, now the ORS seeks to strike this testimony as “unqualified legal opinion.” Motion at 3. Granting the Motion would prejudice the Companies and improperly limit the record by allowing the ORS to provide testimony regarding its understanding of regulatory requirements without providing the Companies an opportunity to rebut that same testimony. Therefore, the Motion should be denied and the testimony should be allowed in its entirety.

B. Witness Huber does not raise issues for the first time in rebuttal.

Finally, the ORS seeks to strike portions of Witness Huber’s testimony, but ignores that the issues covered by that testimony were first raised by ORS Witness Horii. Specifically, ORS

¹ The relevant testimony from Witness Ford provides context for quotes taken directly from Act 62 and Commission Order No. 2015-194. Likewise, the relevant testimony from Witness Huber appears immediately after a direct quote from Commission Order No. 2021-390.

² Commission Order No. 2009-104(A) issued in Commission Docket No. 2008-196-E on March 2, 2009. (The Commission “is entitled to hear testimony and give that testimony whatever weight it deems appropriate during the course of the hearing”).

Witness Horii's direct testimony contains numerous references to the rates of solar adoption by the Companies' customers resulting from the proposed Smart \$aver Solar as Energy Efficiency Programs, and incorrectly suggests that rooftop solar is being adopted by South Carolina customers on a large scale. Horii Direct Testimony at pp. 22-23. Witness Huber directly responds to Witness Horii's testimony by providing data representing the voice of "20,000 South Carolina customers" regarding their decision to adopt and what may drive adoption. Huber Rebuttal Testimony at p. 8, l. 1. Yet, the ORS seeks to strike this testimony as unresponsive. There is a clear link between the direct testimony of Witness Horii and the rebuttal testimony of Witness Huber. It would be unfair to allow Witness Horii to provide multiple references to, and hypotheses on, adoption rates, but not allow Witness Huber to submit data responding to such claims for the Commission's consideration.

For these reasons, the Companies respectfully request that the Motion be denied.

Respectfully submitted this 20th day of October, 2021.

s/Ashley Cooper

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CERTIFICATE OF SERVICE

The undersigned, Lyndsay McNeely, Paralegal for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (the “Companies”), does hereby certify that she has served the persons listed below with a copy of the Companies’ Response in Opposition to South Carolina Office of Regulatory Staff’s Motion to Strike Certain Testimony via electronic mail at the addresses listed below on October 20, 2021.

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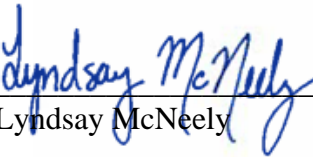
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Dated this 20th day of October, 2021.


Lyndsay McNeely